

ESTTA Tracking number: **ESTTA374508**

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91195724
Party	Defendant Robert A. Casey, Ajmar S. Johal
Correspondence Address	ROBERT A. CASEY 52 WOODVIEW DR HOWELL, NJ 07731-3825 UNITED STATES casey77@optonline.net
Submission	Answer
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Date	10/21/2010
Attachments	Robert A. Casey Answer.pdf ( 3 pages )(66958 bytes )

In the USPTO before the Trademark Trial and Appeal Board

In the matter of Trademark serial No. 77929917

Mark: MS. Menthol

British American  
Tobacco Italia SPA- Opposer  
Petitioner

V.

Mr. Robert A. Casey  
and  
Mr. Ajmar S. Johal  
Registrant

Opposition No. 91195724

**REGISTRANT'S ANSWER AND AFFIRMITIVE DEFENSE**

**COMES NOW, registrant files his Answer in Affirmative Defense to the  
Petition to Cancel as follows:**

1. Registrant totally unaware MS existed in Europe.
2. Understand opposer has filed for Trademark 6 months after I filed.
3. Realize.
4. Admit.
5. Registrant is without sufficient information therefore denies.
6. Admit.
7. Admit not presently engaged, but do intend to be engaged in manufacture of cigarettes.
8. Not true
9. Understood opposer repeats.
10. Registrant

11. Famous Mark Doctrine does not apply. Mark MS is not common and totally unknown.
12. Registrant is without sufficient information therefore denies.
13. Registrant is without sufficient information therefore denies.
14. Registrant is without sufficient information therefore denies.
15. I see that opposer repeats his allegation.
16. Registrant is without sufficient information therefore denies.

### **AFFIRMITIVE DEFENSE**

#### **I. LACHES**

The petitioner claim must fail under Doctrine of Laches. They have rested on their rights and only now are they claiming that they will be harmed by my registration. My registration was nearly eligible for incontestability status however, days before Window opened, opposer's action was filed. Opposer's filing of this action must be barred by Laches.

Their application 85081592 and 85081713 is only a response to my application 77929917 in which opposer's application is junior to mine.

Registrant respectfully requests that cancellation proceeding be dismissed.

Sincerely,

Robert A. Casey  
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**CERTIFICATE OF ELECTRONIC FILING**

I hereby certify that this Answer and Affirmative Defense was filed today, October 21, 2010 on the electronic system for the Trademark Trial and Appeals for the United States Patent and Trademark Office.

Robert A. Casey

**CERTIFICATE OF SERVICE**

The undersigned certifies that a true and correct copy of the foregoing Answer and Affirmative Defenses to the Petition to Cancel Registration No. 77929917 for MS. Menthol was sent certified mail and emailed October 21, 2010.

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Robert A. Casey  
October 21, 2010